IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 18.09.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

W.P. No.24093 of 2003

and

W.P.M.P. Nos.29670 of 2003 and 392 of 2007
and W.V.M.P. No.73 of 2007

1. The General Manager,
   The Kumbakonam Mutual
   Benefit Fund Ltd.,
   No.145, Big Street,
   Kumbakonam - 612 001.

2. The Branch Manager,
   Kumbakonam Mutual
   Benefit Fund Ltd.,
   Tambaram Branch,
   42, Shanmugam Road,
   Tambaram,
   Chennai - 600 045. ... Petitioners

..vs..

1. The Presiding Officer,
   Principal Labour Court,
   Chennai.

2. Sri S. Sadasivam (deceased)
3. Indirani
4. Ashokan
5. Arunthathi
6. Arul
7. Amaran
8. Achuthan
9. Aribabu
10. Alla ... Respondents

(R3 to R10 are substituted
in the place of the deceased
2nd respondent as per order
dated 11.9.2007 in W.P.M.P.
No.391 of 2007).

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Petition under Article 226 of the Constitution of India, praying to issue a writ of certiorari, to call for the records of the first respondent in I.D. No.94/97 dated 18.2.2003 and quash the same.

For Petitioner : Mr. R. Parthiban

For Respondents : Mr. R. Prasad

O R D E R

Challenging the order dated 18.2.2003 passed by the first respondent-Labour Court in I.D. No.94/97, the petitioner-Management have brought forth this writ petition, whereby a writ of certiorari is asked for.

2. The Court heard the learned counsel appearing on either side and looked into the affidavit filed in support of the writ petition along with grounds and also order under challenge.

3. The second respondent was employed by the petitioner-Management as Security Guard from 7.6.1992 onwards; that he was paid a salary of Rs.1,010/- on contract basis from 7.6.1992; that thereafter, he was made permanent by the first petitioner with effect from 1.3.1993; that a charge memo was issued on the grounds of disobedience, insubordination and lack of character; that the second respondent applied for medical leave from 26.3.1995 to 30.3.1995 due to illness and that when he reported for duty on 31.3.1995, a termination order was served upon him. There arose an industrial dispute before the first respondent-Labour Court and orders passed thereon, which is the subject matter of challenge before this Court.

4. The only prime contention put forth by the learned counsel for the writ petitioner-Management is that the Labour Court rests its entire order only on the ground that after receipt of explanation following the issuance of charge memo, a domestic enquiry should have been conducted before passing an order of termination, but not done in this case and thus, the order of termination passed by the Management was bad and illegal and hence it was to be set aside.

5. Learned counsel added further that even if the order of termination was passed without domestic enquiry or some defects are noticed in the enquiry, once the party was given an opportunity to

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lead the evidence before the Labour Court, there is no question of setting aside the order of termination and remitting the matter back for conducting domestic enquiry does not arise. Duty is cast upon the Labour Court to consider the evidence adduced before it and pass suitable orders as one required in law. In the instant case, the Labour Court has not considered any part of evidence and set aside the order of termination on the short ground that there was no domestic enquiry before the order of termination. Hence, the order of the Labour Court has got to be set aside.

6. Contrary to the above, it is contended by the learned counsel for the respondents that in the instant case, the Labour Court has considered all the aspects of the matter. When there was a show-cause notice served upon the second respondent, an explanation was placed by him. Not satisfied with the same, an order of termination was passed. Before passing the said order, a domestic enquiry was to be conducted. Even as per the order, it was construed, when the evidence was adduced before the Labour Court, it exercised its judicial mind after going through the evidence available and passed the order under challenge. Hence the writ petition has got to be dismissed.

7. After careful consideration of submissions made by either side and looking into the legal position, the Court is of the considered opinion that the order under challenge has got to be set aside. It is not in controversy that the order of termination being met by the second respondent. The second respondent took it by way of an industrial dispute before the Labour Court. The Labour Court has also given opportunity to adduce evidence oral and documentary, but the reading of the impugned order would clearly reveal that the Labour Court declared the termination order of the second respondent-workman is bad and illegal only on the ground of non conducting of domestic enquiry before the order of termination was passed. It has nowhere considered any part of the evidence, oral and documentary, adduced by the parties or any aspect of the matter.

8. It is well settled principles of law that once the Labour Court has given an opportunity to adduce evidence, even no domestic enquiry was conducted before the order of termination, the matter should not be remitted back to the Management for conducting domestic enquiry and the Labour Court has to pass suitable orders on appreciation of available evidence, which was adduced and recorded by it. In the instant case, it is an admitted position before the Labour Court that both the parties are given opportunity to adduce evidence and they adduced evidence, both oral and documentary. If to be so, a duty cast upon the Labour Court to consider the evidence and pass suitable orders as one required under law.

9. Hence an irresistible conclusion arrived at by this

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Court is that the order of the Labour Court is not in accordance with the aforesaid settled principles of law. Under such circumstances, without any hesitation, it has got to be set aside and it has to be remitted back to the Labour Court to consider and pass suitable orders on appreciation of evidence already recorded and available before it. With these observations, the order of the Labour Court is set aside and remitted back to the Labour Court to pass suitable orders. In the instant case, the second respondent-employee is already died. Hence, his legal representatives have been added. Under the circumstances, it would be fit and proper to issue direction to the Labour Court to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

10. The legal representatives of the second respondent are permitted to withdraw 50% of the amount deposited, which would represent the subsistence allowance, to the credit of I.D. No.94 of 1997 on the file of the Labour Court.

11. With the above observations, the writ petition is disposed of. Consequently, the connected W.P.M.Ps. are closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

The Presiding Officer,
Principal Labour Court,
Chennai.

+1cc to Mr.R.Parthiban,Advocate Sr 58641
+1cc to Mr.R.Prasadh, Advocate Sr 58350

SCD (CO)
km/1.10.

W.P. No.24093 of 2003 and
connected W.P.M.Ps.

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